

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 515 of 1986

with

CRIMINAL APPEAL No 67 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RAMESHCHANDRA B KHATRI

Appearance:

1. Criminal Appeal No. 515 of 1986
MR KT DAVE, APP for Petitioner
MR MC SHAH for Respondent No. 1
 2. Criminal Appeal No 67 of 1987
MR MC SHAH for Petitioner
MR DD VYAS for Respondent No. 1
MR KT DAVE, APP for Respondent No.2.
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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 03/03/2000

ORAL JUDGEMENT

1. Both these acquittal appeals arise out of the judgment and order of acquittal rendered by the learned Sessions Judge, Valsad at Navsari in Criminal Appeal No. 30/1985 setting aside the judgment and order of conviction passed by the learned Judicial Magistrate First Class, Navsari in Criminal Case No. 652/1984 whereby the learned Magistrate convicted the respondent - accused Rameshchandra Bhagwandas Khatri for the offences punishable u/S. 7 (1) read with sec. 16 of the Prevention of Food Adulteration Act (for short 'the Act') and sentenced him to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.500/- and in default to undergo simple imprisonment for 30 days.

2. The prosecution case in brief is that the complainant Food Inspector visited the shop of the accused and purchased sample milk Mava from his shop. He followed the required procedure and sent the sample to Public Analyst for its examination and upon the Public Analyst having found that the sample of milk Mava was adulterated in as much as it was sub-standard, complaint was filed before the Ld. Judicial Magistrate First Class, Navsari. At the conclusion of trial the Ld. Magistrate rendered conviction and sentence as aforesaid but on appeal the accused came to be acquitted as per the appellate judgment and order dated 30/1/1986. The question was whether the prosecution was able to show that the accused dealt in milk Mava in question. On appreciation of evidence it could be noticed that the accused was not himself manufacturing, dealing in or storing for the purpose of sale the milk Mava in question.

Having heard the learned advocate appearing for the complainant before this Court as well as Ld. APP for the State and learned advocate for the accused and having gone through the evidence, it could be noticed that the prosecution could not establish as a matter of fact that the accused was himself manufacturing, dealing in for sale, distributing for sale or storing for sale the milk Mava in question, sample whereof was examined by the Public Analyst. It is no-doubt true that the report of Public Analyst shows that the milk Mava did not conform to the standards prescribed under the rules and the milk fat was found to be less by around 7% and odd. Apart from the fact that the report does not indicate that the sample was unfit for human consumption or hazardous to

human health it has been found as a matter of fact that the accused was not himself dealing with the milk Mava in question. In fact he was preparing sweets and probably the milk Mava might have been secured/procured by him in the usual course of dealing in sweet items. That is how the milk Mava might be in possession of the accused. The Ld. Sessions Judge considering the decisions contained in the case of Food Inspector v. Cherukattil Gopalan reported in AIR 1971 S.C. 1725 and Delhi Municipality v. L.N. Tondon reported in AIR 1976 S.C. 621 upheld the submission of the Ld. counsel for the accused and set aside the conviction and sentence. Both these decisions have been read before this Court. It would be interesting to note from the decision in Delhi Municipality (supra) that very substantive provisions of the Act were considered by the Apex Court and it has been held that from the conjoint reading of the provisions contained in sections 7 and 16 of the Act read with section 10 thereof it would be clear that the broad scheme of the Act is to prohibit and penalise the sale or import, manufacture, storage or distribution for sale of any adulterated article of food. The terms "store" and "distribute" have been held to take their colour from the context and collocation of words in which they occur in the provisions of sections 7 and 16. It has, therefore, been held that the words "storage" and "distribution" of an adulterated article of food for a purpose other than for sale does not fall within the mischief of the said section. This can be visualised from the observations and conclusions appearing in para. 14 of the citation.

3. No other decision could be pointed out so as to support the prosecution case in any other respect. Hence, in the facts of the case, both these appeals deserve to be dismissed. Order accordingly.

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PVR.